IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3770 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ILABEN NATVARLAL KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3770 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Rajkot City, vide order dated March 19, 2001, Annexure A

to the petition, detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a bootlegger within the meaning of Section 2 (b) of the Act as six cases under the Prohibition Act are registered against her and statements of two anonymous witnesses in an unregistered case are recorded, according to the detaining authority, her activities are detrimental to the maintenance of public order and, therefore, powers under section 9 (2) of the Act were exercised while detaining the petitioner.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention and to set her at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Patel, learned advocate for the petitioner has restricted her arguments to the point of non-supply of the legible copies of the documents referred to and relied upon by the detaining authority which has seriously prejudiced the petitioner's right of making an effective representation to the concerned authority and infirmity in this regard is violative of the safeguard enshrined in Article 22 (5) of the Constitution. According to her, on this ground alone, the order of detention requires to be set aside. Besides this, she also contended that the privilege claimed under section 9 (2) of the Act cannot be said to be genuine as no reply affidavit is filed by the detaining authority. She, therefore, urged to set aside the impugned order of detention and to set the petitioner at liberty forthwith.

5. Mr. K.T. Dave, learned AGP who appears on behalf of the respondents has not disputed the fact that certain pages of the documents supplied to the petitioner are not legible. Therefore, he urged to pass appropriate order in light of the principles of law enunciated by this Court in this regard.

6. I have heard the learned advocates appearing for the parties, considered the averments made in the petition and perused the documents annexed to the petition.

7. Similar question arise before this Court in he case of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, 1988 (2) GLH 414. In that case some of the pages of the judgment supplied to the detenu were not legible and the Division Bench of this Court held that it would amount to non-communication of the grounds and it also adversely affected the petitioner's right of making effective representation to the concerned authority and therefore, the order of detention was quashed and set aside. Applying the said principles to the facts of the present case, be it stated that some of the pages of the documents supplied to the detenu by the detaining authority are illegible and, therefore, it can be said that non-supply of legible copies of the documents has seriously prejudiced the petitioner's right of making an effective representations to the concerned authority and on this ground alone the order of detention stands vitiated and the petition deserves to be allowed. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution and hence the order of detention stands vitiated.

8. So far as the privilege claimed under Section 9 (2) of the Act by the detaining authority is concerned, it cannot be termed as genuine as there is no reply affidavit filed on behalf of the detaining authority and, therefore, on this ground also the order of detention is vitiated. On overall view of the matter, the order of detention is vitiated and the petition deserves to be allowed.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)